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California Department of Corrections
and Rehabilitation

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROSARIO MARINELLO,

Plaintiff

vs

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,

Defendant.

Case No. CV08-0664 JW

**NOTICE OF DEFENDANT
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION'S MOTION TO
DISMISS THE AMENDED
COMPLAINT
[Fed.R.Civ.Proc Rule 12(b)(6)]**

Date: October 27, 2008

Time: 9:00 a.m.

Ctrm: 8

Judge: Hon. James Ware

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 27, 2008 at 9:00 a.m. or as soon thereafter as counsel may be heard in Courtroom 8 of the above-entitled court, located at 280 South 1st Street, San Jose, CA 95113, Defendant California Department of Corrections and Rehabilitation ("CDCR") will move for an order to dismiss plaintiff's amended complaint under Federal Rules of Civil Procedure, Rule 12 (b)(6).

1 This motion is necessitated by plaintiff's continued inability to sufficiently state a cause
2 of action under Title VII of the Civil Rights Act of 1964. To wit, plaintiff has not and cannot
3 allege that he was engaged in any protected activity as defined by Title VII.

4 The motion is based upon this Notice of Motion, the Memorandum of Points and
5 Authorities filed herewith, the pleadings, records and files in this action, and on such further
6 material and argument as may be submitted at or before the hearing on this motion.
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8 WHEREFORE, Defendant prays as follow:

- 9 (1) That the Complaint and each claim for relief alleged therein be dismissed as against
10 Defendant State of California Department of Corrections and Rehabilitation without
11 leave to amend;
12 (2) That Plaintiff be ordered to take nothing from moving Defendant;
13 (3) That judgment be entered in favor of the moving Defendant; and
14 (4) For such other relief as the court deems just.
15

16 Dated: July 21, 2008

Respectfully submitted,

17 EDMUND G. BROWN JR.
18 Attorney General of the State of California
19 MIGUEL A. NERI
20 Supervising Deputy Attorney General
FIEL D. TIGNO
Supervising Deputy Attorney General

21 /s/
22 DAVID PAI
23 Deputy Attorney General

24 Attorneys for Defendant
25 California Department of Corrections and
26 Rehabilitation
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